

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 25, 2013

In the Matter of FREEMAN, Minors.

No. 312800

Oakland Circuit Court

Family Division

LC No. 11-783818-NA

Before: BORRELLO, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Respondent mother appeals of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm the trial court's finding that the Department of Human Services demonstrated the statutory grounds for termination by clear and convincing evidence, but vacate the court's best-interest determination and remand for a new best interests determination consistent with this opinion.

The Department removed the children from both parents' care in April 2011 because of environmental neglect, criminality, and substance abuse. At the time, both parents were incarcerated. Respondent and the children's father entered into parent agency agreements requiring suitable housing and employment, parenting classes, parenting time, substance abuse screens and treatment, and any recommended psychological evaluations and counseling. After respondent failed to substantially comply with these requirements, the Department petitioned to terminate her parental rights to the minor children.

In February 2012, respondent executed a plea agreement and did not contest the allegations in the supplemental petition. A caseworker provided a factual basis, and the court found clear and convincing evidence to support termination under MCL 712A.19b(3)(g) and (j). The trial court held a best-interest hearing and ultimately determined that termination was in the children's best interests in September 2012.

On appeal, respondent argues that the trial court erred when it found that termination of her parental rights was in her children's best interests. As a preliminary matter, we note that there was evidence to support this finding. Respondent mother failed to improve her parenting skills sufficiently to be able to adequately parent her children. She failed to take domestic violence classes or complete parenting classes and did not screen regularly. She apparently did attend drug rehabilitation, but failed to benefit from it; she tested positive for alcohol, marijuana, and heroin during the case's pendency. See *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Further, she failed to maintain adequate housing, employment, or consistent

contact with the Department. She was also incarcerated twice and did not visit the children consistently. When she did not come, her five-year-old child was very disappointed. Given these facts and the fact that the children had been in care nearly 16 months, the trial court could reasonably find that it would be in the children's best interests to terminate respondent's parental rights.

That being said, we agree with respondent's contention that the trial court could not properly make its best interests determination without explicitly addressing whether termination was appropriate in light of the children's placement with relatives. As this Court has explained, if a child has been placed with relatives, the trial court must explicitly consider the relative placement in evaluating best interests: "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012); see also MCL 712A.19a(6); *In re Mays*, 490 Mich 993, 994; 807 NW2d 307 (2012); *In re Mason Minors*, 486 Mich 142, 164; 782 NW2d 747 (2010).

Here, the trial court focused the majority of its analysis on whether respondent complied with her parent agency agreement; and, when addressing the children's best interests, it did not explicitly address the fact that the children had been placed with relatives as required by the decisions in *Mays*, 490 Mich at 994, *Mason*, 486 Mich at 164, and *Olive/Metts*, 297 Mich App at 43-44. These decisions emphasize that when the children are in relative care, this fact must be weighed *against* termination. The court in the present case seemed to weigh relative care *in favor* of termination. Nowhere in the court's opinion was there any recognition of the necessity to consider relative placement as weighing against termination. For this reason, we must vacate the court's best-interest determination and remand for a new best interests determination in which the court should explicitly consider the children's placement with relatives when making its finding.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Michael J. Kelly